IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 48 of 2001.
Judgment reserved on: 03.12.2007.
Date of Decision: 5-12-2007 .

State of H. P. Appellant.

Versus

Parkash Chand. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Mr. V.K. Verma, Addl. Advocate General.

For the respondent : Mr. Sunil Chaudhary, Advocate.

Surinder Singh, J.

The trial Court has acquitted the respondent under Section 379 of the Indian Penal Code read with Section 41 and 42 of the Indian Forest Act against which the instant appeal has been filed.

In short, the prosecution case has been that during the intervening night of 13th and 14th October, 1998, A.S.I. Jaram Singh along with Police and Forest officials was on patrol duty with witness Chhota Ram. They put the naka at the place known as "Dolbar" near Ravinda Haryali. They spotted the respondent having Dupatta on his shoulder and was carrying and transporting the khair load with the help of torch. The Police demanded the permit or the license to carry the forest produce. Since the respondent did not produce any permission, as such, the khair load was taken into possession and according to the case of the prosecution, the respondent had cut it from the near demarcated protected forest. These were nine logs of different sizes weighing about 40 kg and valuing Rs. 4027/- as assessed by the Forest Department as per certificate Exhibit PW2/A. One log of the size of 0.55 mtr having girth of 0.24 mtr was retained as a sample and the

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

remaining logs were given on supurdari to the Forest Guard. The Police prepared the ruka Exhibit PW7/A and sent it for registration of the case. FIR Exhibit PW7/B was registered. The Police prepared the site plan, recorded the statements of the witnesses. The place from where the said logs were cut was identified. The Dupatta Exhibit P3, Torch Ext. P2 and Axe Ext.P4 were taken into possession. The respondent is also alleged to have made disclosure statement under Section 27 of the Indian Evidence Act pointing out the place. The certificate of Revenue Officer Ext. PW3/A was taken into possession along with other relevant record record. The challan under the aforesaid Sections was presented in the Court against the respondent for trial. The respondent was charge-sheeted. He pleaded not guilty and claimed trial.

To prove its case, the prosecution examined the witnesses. The respondent was also examined under Section 313 of the Code of Criminal Procedure. His case was of denial simplicitor. The trial Court acquitted the respondent on the ground that Chhota Ram independent witness was not examined and the Police did not join the witnesses of the locality which cast a doubt on the authenticity of the prosecution case and further that the prosecution was not able to prove that the respondent cut and removed the khair trees form the forest C-1 DPF Palshed (Khal) and transported the same.

I have heard the learned counsel for the parties and have meticulously examined the evidence on record. In my opinion, the judgment of the trial Court is perverse as far as the acquittal with respect to transporting the logs of khair are concerned, because PW1 Babu Ram has clearly stated that around 4.15 a.m., the respondent was carrying the load of the khair logs as aforesaid and was caught red handed while transporting the same with the help of torch light. The Dupatta as well as torch of the respondent were taken into possession along with the logs vide Memo Exhibit PW1/A. In his cross-examination, the suggestion of the respondent is admitted that thereafter the respondent was taken to the Police Station. The Investigating Officer, S.I. Jaram Singh has also made the similar

statement. Rather, in his cross-examination, the respondent had put to him that when the respondent was caught, nobody from the near by village was called and further the suggestion of the respondent has been admitted that when the respondent was caught, it was dark. In other words, the respondent has not denied having been apprehended by the Police as alleged. In view of the above statements and the admission in the form of suggestion which is also an evidence, it is abundantly clear that the respondent was caught red handed while transporting 40 kg of khair trees and in these circumstances as set out in the prosecution case. Thus, non-examination of Chhota Ram or non-inclusion of any witness from the nearby village is of no consequence nor it is the requirement of law. The respondent had failed to produce the permission or the export permit of the aforesaid case property at any time during the pendency of this case. Therefore, in my considered opinion, his acquittal under Section 41 and 42 of the Indian Forest Act is wrong and illegal. Therefore the said offence stands proved and the impugned judgment requires to be reversed to this extent.

As far as Section 379 of the Indian Penal Code is concerned, the prosecution has relied upon the statement regarding pointing out, alleged to have been taken under Section 27 of the Indian Evidence Act which is hit by Section 162 of the Code of Criminal Procedure and is not admissible in evidence. Secondly, no proper demarcation of the impugned land was conducted, thirdly, there is no other legal evidence on record to show that the respondent had cut and removed the khair trees from the demarcated protected forest. Therefore, the acquittal of the respondent under Section 379 of the Indian Penal Code is up-held.

The net result of the above discussion is that the acquittal of the respondent under Section 41 and 42 of the Indian Forest Act is perverse and is set aside, accordingly I convict him for the said offence, whereas, his acquittal for the offence of theft under Section 379, I.P.C. is upheld. Consequently, the State appeal stands partly accepted.

I have heard the learned counsel for the respondent on the quantum of sentence. According to him, the alleged offence had taken place in the year 1998. The respondent faced the torture of the trial for all these years and more than fifteen years have elapsed while facing the uncertainty. It is also argued that the ends of justice will be met in case the respondent is sentenced to fine only.

The punishment provided under Section 41 and 42 for illicit transport of the timber is to pay a fine of rupees 500/- or imprisonment for a period of six month or both. If the offence is committed after the sun set and before the sun rise, it is double the above sentence.

In the instant case the respondent has been found to have committed the offence after the sunset and before the sun rise. Keeping in view the fact that the respondent was only transporting 40 kg of khair logs and there is no evidence that he was convicted in the similar offence earlier, therefore, ends of justice will be met in case he is sentenced to pay a fine of rupees 1000/- and imprisonment till the rising of the court. The amount shall be paid by the respondent on or before 4th January, 2008, failing which it shall be recoverable as per the provisions of Section 421 of the Code of Criminal Procedure.

Copy of the judgment be given to the counsel for the respondent forth with free of cost. Send down the records.

(Surinder Singh)
Judge.

December 5, 2007.
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